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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 6 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Rulemaking to Amend Part 1 and
Part 21 of the Commission's Rules
to Redesignate the 27.5-29.5 GHz
Frequency Band and to Establish
Rules and Policies for Local
Multipoint Distribution Service

CC Docket No. 92-297

RM-7872; RM-7722

MOTION OF MOTOROLA SATELLITE COMMUNICATIONS, INC.
FOR LEAVE TO FILE SUPPLEMENTAL COMMENTS

Motorola Satellite Communications, Inc. ("Motorola") hereby respectfully moves the Commission to file the Supplemental Comments attached hereto in the above-captioned proceeding. These comments are compelled by certain suggestions made in the reply comments of Video/Phone Systems, Inc. and the comments of Suite 12 Group. Specifically, Video/Phone and Suite 12 Group seek to exclude from the agenda of the Negotiated Rulemaking Committee deliberations the question of sharing between the feeder uplinks of MSS systems and other Fixed-Satellite Services as well as all other "intra-FSS" sharing questions. Further, Video/Phone asks the Commission to bar the Committee from considering alternative bands.

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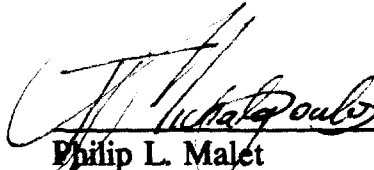
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If entertained, these suggestions would seriously undermine the usefulness of the proposed negotiated rulemaking. Motorola respectfully submits that this danger is serious enough to warrant the filing of these Supplemental Comments, which set forth the respects in which the usefulness and success of the regulatory negotiation might be seriously compromised by these suggestions.

Respectfully submitted,

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Dated: April 6, 1994

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**SUPPLEMENTAL COMMENTS OF
MOTOROLA SATELLITE COMMUNICATIONS, INC.**

Motorola Satellite Communications, Inc. ("Motorola") hereby files supplemental comments in the above-captioned proceeding. Motorola's comments are necessitated by certain suggestions made with respect to the charter of the negotiated rulemaking in the reply comments of Video/Phone Systems, Inc. and the comments of Suite 12 Group. Motorola is compelled to respond to those suggestions because it fears that they would seriously undermine the usefulness of the proposed negotiated rulemaking if they were to be followed. Specifically, Video/Phone and Suite 12 seek to exclude from the charter of the Negotiated Rulemaking Committee deliberations the question of sharing between the feeder uplinks of MSS systems and other Fixed-Satellite

Services as well as all other "intra-FSS" sharing questions. Further, Video/Phone asks the Commission to bar the Committee from considering alternative bands.

At the outset, Motorola is gratified to note that all of the commenters supported the Commission's proposal for regulatory negotiation and filed constructive comments, indicating a good faith willingness to see the negotiation through to a successful conclusion. In particular, Motorola notes with satisfaction that no objections were raised to the bulk of the recommendations it made in its comments. These uncontested recommendations of Motorola include its requested clarification with respect to the scope of "sharing" as used to define the Committee's mandate. Motorola emphasizes again that the Committee's mandate should cover all methods of sharing, and that sharing by band segmentation should be accorded equal status with co-frequency co-coverage sharing in the Committee's charter and work program.^{1/}

In the same spirit of good faith effort for successful regulatory negotiation, Motorola submits that the limitations to the Committee's mandate suggested by Video/Phone and Suite 12 will keep the Committee from providing the Commission with the assistance the Commission envisages, and could make consensus difficult or impossible to achieve.

Video/Phone specifically argues that "issues relating to the ability, or lack thereof of different proposed 28 Ghz satellite systems to coexist with one another

^{1/} Also, these two methods of sharing should be considered simultaneously by the Committee. If they were to be considered successively, the Committee may well be faced with the same fate as the MSS Above 1 GHz Negotiated Rulemaking Committee, namely, a failure to reach consensus on spectrum sharing because it turned to band segmentation only at the eleventh hour.

have no place in the LMDS NRM proceedings." Video/Phone Reply Comments at 6. See also Suite 12 Comments at 8. Video/Phone suggests that inclusion of those issues is the result of an attempt by satellite interests to enlarge the mandate of the Committee. However, inclusion of intra-FSS sharing in the Committee's agenda is in fact contemplated by the Commission itself. See, e.g., Public Notice, CC Docket No. 92-297, Mimeo No. 41726 (released Feb. 11, 1994) at ¶ 6 (framing the Committee's mandate as developing rules to maximize sharing "among" LMDS and FSS, asking the Committee to seek to accommodate all proposed uses of the band). Further, the Commission's Notice of Proposed Rulemaking in the MSS Above 1 GHz licensing proceeding and its second NPRM in the instant proceeding expressly state that the Commission looks largely to this negotiated rulemaking proceeding to identify sufficient spectrum for all the MSS systems' feeder uplinks. Naturally, the identification of spectrum to accommodate a specific FSS use presupposes consideration of intra-FSS sharing questions. See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, CC Docket No. 92-166, Notice of Proposed Rulemaking at ¶ 77. See also Second Notice of Proposed Rulemaking ("Second NPRM"), CC Docket No. 92-297, at ¶¶ 17-22.

The Commission has proposed inclusion of intra-FSS sharing in the Committee's mandate with good reason. First, given that band segmentation sharing must be one of the sharing methods to be considered by the Committee, it follows that intra-FSS sharing issues will have a direct bearing on the LMDS/FSS sharing issue. This

is because resolution of intra-FSS sharing issues will be determinative of the total amount of spectrum needed by the FSS and hence will have a direct impact on the amount of spectrum that can be allocated for a LMDS band segment.

Second, exclusion of the intra-FSS sharing would hamper the Committee's potential for consensus. The satellite participants are not interested in FSS in the abstract, but rather in ensuring the accommodation of the particular use of the band that they propose. Therefore, the satellite interests would justifiably not be able to reach consensus on LMDS/FSS sharing if they are not satisfied that their particular use can be accommodated. By the same token, the "prioritizing" suggested by Video/Phone as an alternative, see Video/Phone Reply Comments at 7 n.9, would have the same unfortunate result: the satellite participants would likely be incapable of reaching consensus on the proposed "priority" question of LMDS/FSS sharing until the intra-FSS items that Video/Phone seeks to relegate to a low priority are resolved.^{2/}

Third, exclusion of intra-FSS sharing would be inefficient. Even assuming that the Committee could reach consensus on LMDS/FSS sharing without need to consider intra-FSS issues, this consensus would be of limited value to the Commission, as it would leave unresolved a myriad of questions concerning sharing in the 28 GHz band, and (as Video/Phone itself recommends) would necessitate new rulemaking proceedings to resolve them. The need for such new proceedings was clearly not what

^{2/} Suite 12 also professes concern with the potential domination of the negotiating table by "well-financed representatives of the enormous corporations who make up the well-established satellite industry." Suite 12 Comments at 6. Motorola observes that LMDS interests include the RBOCs who are nothing if not enormous, well-financed corporations.

the Commission contemplated by proposing institution of a negotiated rulemaking. Instituting and participating in a negotiated rulemaking that can at best attain such a limited result would waste the Commission's and the satellite interests' resources and time.

Video/Phone similarly opposes the enlargement of the Committee's mandate to include alternative bands and contends that such enlargement would be contrary to the Commission's conclusion in the Second NPRM. Video/Phone Reply Comments at 9. This is not so. The Second NPRM simply states that the Commission will not consider the specific recommendations of certain parties regarding the 36 GHz and higher bands "unless recommended otherwise by a consensus of a negotiated rulemaking committee." Second NPRM at ¶ 22 n.15. This clearly means that the Commission contemplated consideration of alternative bands as within the Committee's mandate. Besides, in their comments Motorola and other parties have suggested consideration, not of spectrum above 36 GHz, but rather of contiguous spectrum (the 27.0-27.5 and 29.5-31.0 GHz bands) that has similar technical characteristics to the 28 GHz band and, therefore, would not necessitate significant

hardware changes. Consideration of those alternative bands would avoid polarization and enhance the Committee's potential for consensus.^{3/}

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^{3/} Motorola also wants to take this opportunity to suggest that, in establishing the Committee's schedule, the Commission should provide for a hiatus from June 2 through June 10, 1994 to allow several members of the Committee, including the Commission's representative Thomas Tycz, to participate in the meeting of ITU Radiocommunication Sector Task Group 4/5 on MSS feeder links, scheduled for that period. The work of TG 4/5 is directly related to the work of the Negotiated Rulemaking Committee.

CERTIFICATE OF SERVICE

I, Pantelis Michalopoulos, hereby certify that copies of the foregoing Supplemental Comments of Motorola Satellite Communications, Inc., were served by first-class mail, postage prepaid, this 6th day of April, 1994 on the following persons:

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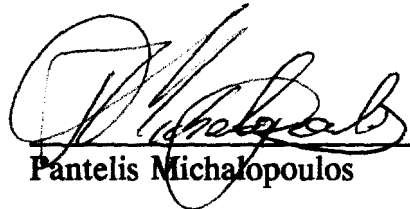
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